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Tarrant County Texas

Official Public Records

7/16/2010 8:09 AM

D210171584



PGS 4 \$28.00

**NONDISTURBANCE  
AND ATTORNMENT OF OIL AND GAS LEASE**

This Nondisturbance Agreement and Attornment of Oil and Gas Lease (the "Agreement"), executed effective as of the 21st day of May, 2010, by and between Wells Fargo Financial Texas, Inc., f/k/a Norwest Financial Texas, Inc., whose principal address is 8701 Bedford-Euless Rd, Ste 210, Hurst, TX 76053 (the "Mortgagee"), and XTO Energy, Inc., whose mailing address is 810 Houston St, Fort Worth, TX 76102 (the "Lessee");

WITNESSETH THAT:

WHEREAS, the Mortgagee is the owner of a certain mortgage on residential real property (the "Mortgage") executed by Steven Sireika and Sandra Sireika, (the "Lessor"), to secure the mortgage secured by the real property described on Exhibit A, attached hereto and incorporated herein by this reference (the "Mortgaged Property"); which Mortgage is dated March 22, 1999, and was recorded on April 26, 1999, as Instrument No. D199104675, in the land records of Tarrant County, State of Texas; and

WHEREAS, effective as of the 4th day of October, 2007, Lessor executed an oil, gas and mineral lease (the "Lease"), attached hereto as Exhibit "B" and made a part hereof, running to the benefit of Lessee and granting certain rights to all or a part of the Mortgaged Property.

NOW, THEREFORE, in consideration of the premises and the mutual promises of the parties set forth below, the parties hereby agree as follows:

1. NONDISTURBANCE. Mortgagee acknowledges and agrees that during the life of the Lease encumbering the Mortgaged Property it will not infringe upon or disturb the leasehold interests of Lessee, and Lessee shall continue in the quiet enjoyment of same, including, subject to the provisions of Section 2 hereof, the right to pay all rents and royalties payable under the Lease to the Lessor.

2. PAYMENT OF ROYALTIES. Lessee agrees, in consideration of the execution of this Agreement by Mortgagee, that in the event the Mortgagee advises Lessee in writing that the Mortgage of Lessor is delinquent, then Lessee will pay to Mortgagee all royalties and rentals due or to become due until further notice by Mortgagee that the Lessor is no longer delinquent.

3. ATTORNMENT. In the event the Mortgage is foreclosed for any reason, and the Mortgagee succeeds to the interest of the Lessor under the Lease, the Lessee agrees that it shall recognize the Mortgagee as the successor in interest to the Lessor and to any and all of the right, title and interest of the Lessor under the Lease. In such case, the Lessee also agrees to render to the Mortgagee the performance of all of the Lessee's obligations which, under the terms of the Lease, are for the benefit of the Lessor, for the balance of the term of the Lease remaining, with the same force and effect as if the Mortgagee were the Lessor under the Lease.

The Lessee hereby attorns to the Mortgagee, such attornment to be effective and self-operative, without the execution of any further instrument on the part of either of the parties hereto, immediately upon Mortgagee's succession to the interests of the Lessor under the Lease; provided, however, that the Lessee shall not be obligated to pay royalties payable to the Lessor under the terms of the Lease to the Mortgagee until the Lessee shall receive written notice from the Mortgagee in accordance with the terms of Section 2 hereof. The respective rights and obligations of the Lessee and the Mortgagee upon such attornment shall, to the extent of the then remaining balance of the term of the Lease, be the same as now set forth in the Lease. The Lease and all of its terms are hereby incorporated by reference in this Agreement with the same force and effect as if set forth completely herein.

4. CONFLICT BETWEEN AGREEMENT AND LEASE. In the event of any conflict or difference between the terms of this Agreement and the terms of the Lease, Lessee agrees that the terms of this Agreement shall supersede and be applicable in lieu of the terms of the Lease.

5. BINDING EFFECT. The rights and obligations of the parties hereunder shall bind and inure to the benefit of the respective successors and assigns of the parties hereto.

6. AMENDMENTS. This Agreement may not be amended or modified except by a writing signed by Mortgagee and Lessee or their permitted successors and assigns.

7. GOVERNING LAW. This Agreement shall be construed and interpreted in accordance with and be governed by the laws of the United States insofar as they may be applicable, and if such laws are not applicable, then under the laws of the state in which the Property is located.

8. NOTICE. Any notice or communication required or permitted hereunder shall be given in writing, sent by (a) personal delivery, (b) delivery service with proof of delivery, (c) United States mail, postage prepaid, registered or certified mail, return receipt requested or (d) prepaid telegram or facsimile transmission (provided that such telegram or facsimile transmission is confirmed as received), addressed as follows:

If to Mortgagee, to:  
Wells Fargo Financial  
8701 Bedford-Eules Rd, Ste 210  
Hurst, TX 76053

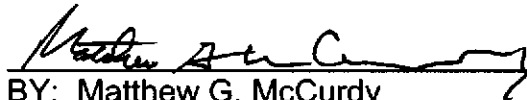
If to Lessee, to:  
XTO Energy, Inc.  
810 Houston St.  
Fort Worth, TX 76102

Either party hereto may change the address set forth above by giving written notice to the other party in the manner set forth above. Any such notice or communication shall be deemed to have been given (i) in the case of hand delivery, at the time of personal delivery, (ii) in the case of delivery service or mail, as of the date of receipt, or (iii) in the case of telegram or facsimile, upon receipt.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by duly authorized representatives as of the day and year first written above.

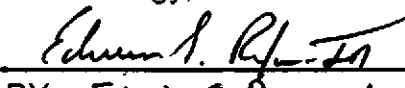
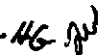
"MORTGAGEE"

Wells Fargo Financial Texas, Inc.

  
BY: Matthew G. McCurdy  
ITS: Vice President

"LESSEE"

XTO Energy, Inc.

   
BY: Edwin S. Ryan, Jr.  
ITS: Senior Vice President - Land Administration

## ACKNOWLEDGEMENTS

THE STATE OF IOWA

COUNTY OF POLK

This instrument was acknowledged before me on the 21st day of May, 2010 by Matthew G. McCurdy, (Name) of Wells Fargo Financial Texas, Inc., as Vice President (Title) on behalf of said corporation.

My Commission Expires: 12/8/2011  
 State, IOWA  
 County, POLK

Notary Public

THE STATE OF TexasCOUNTY OF Tarrant

This instrument was acknowledged before me on the 24th day of July, 2010 by Edwin S. Ryan Jr, (Name) of XTO Energy, Inc., as Sr. VP Land Administration (Title) on behalf of said corporation.

My Commission Expires: 3-24-2014Notary Public Theresa Lay Chatham

State, Texas  
 County, Tarrant

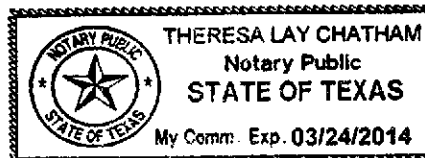


EXHIBIT "A"

A tract of land situated in the Moses Townsend Survey, in Abstract No. 1552, Tarrant County, Texas, including streets, easements and alleyways adjacent thereto, more particularly described in that certain Deed recorded December 17, 1985 in Volume 8401, Page 2293.

Return to: Bryson G. Kuba  
6127 Green Jacket Dr.  
Apt. # 1136  
Fort Worth, TX 76137